

Internal Revenue Service

Number: **201033016**

Release Date: 8/20/2010

Index Number: 368.00-00, 368.06-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:01

PLR-117041-10

Date:

May 20, 2010

Legend:

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

State A =

Business A =

Date A =

Date B =

X =

Dear :

This letter responds to your April 16, 2010 request for rulings as to the federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Facts

Parent, a State A corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Parent Group"). The Parent Group is engaged in various businesses, including Business A, which is operated by Sub 4 (a State A limited liability company).

Parent indirectly owns all interests in Sub 4 through a chain of wholly-owned State A corporations comprised of Sub 1, Sub 2, and Sub 3. From the date of its formation until Date A, Sub 4 was disregarded as an entity separate from Sub 3 (its sole owner) for federal income tax purposes. Effective on Date B, Sub 4 made an election under Treasury Regulation § 301.7701-3 to be classified as an association taxable as a corporation. Sub 4 owns approximately X percent of the common stock of Sub 5, a State A corporation. Parent also indirectly owns (through another chain of corporations) all the stock of Sub 6, a State A corporation.

As part of its efforts to expand Business A and to raise capital for use in its other businesses, Parent is seeking an unrelated party to invest in Business A through a joint venture that is expected to be treated as a partnership for federal income tax purposes. Under Treasury Regulation § 301.7701-3(c)(1)(iv), Sub 4 cannot presently make another election to change its classification for federal income tax purposes. Parent

also has determined that a contribution by Sub 4 of the Business A assets and liabilities to a newly formed legal entity would not be practicable. Accordingly, to facilitate the establishment of a joint venture for Business A, Parent has proposed the transaction described below (the “Proposed Transaction”).

Proposed Transaction

To achieve the business purpose described above, Parent has proposed the following steps:

- (i) Sub 4 will sell its stock in Sub 5 to Sub 6 for fair market value (the “Disposition”).
- (ii) Sub 3 will form a wholly owned State A corporation (“Holdco”).
- (iii) Holdco will form a wholly owned State A limited liability company (“Investco”) that will be treated as a disregarded entity for federal income tax purposes.
- (iv) Investco will form a wholly owned State A limited liability company (“Opco”) that will be treated as a disregarded entity for federal income tax purposes.
- (v) Sub 4 will merge with and into Opco, with Opco surviving (together with steps (ii) through (iv), the “Reincorporation”).
- (vi) Holdco will sell a 50 percent interest in Investco to an unrelated third-party investor for a cash payment equal to the fair market value of such interest (the “JV Formation”).

Representations

In connection with the Proposed Transaction, the taxpayer has made the following representations:

- (a) Immediately prior to the Reincorporation, Holdco will be engaged in no business activity, will have no tax attributes (including those specified in section 381(c)), and will hold no assets (except for nominal assets necessary to pay incidental expenses or maintain Holdco's status as a corporation under State A law).
- (b) The fair market value of the stock of Holdco received by Sub 3 in the Reincorporation will be approximately equal to the fair market value of the interests in Sub 4 surrendered in the exchange.
- (c) There is no plan or intention by Sub 3 to sell, exchange or otherwise dispose of any of the stock of Holdco received in the Reincorporation.

- (d) Immediately following the Reincorporation, Sub 3 will own all of the outstanding stock of Holdco; Sub 3 will own such stock solely by reason of its ownership of the interests in Sub 4 immediately prior to the Reincorporation.
- (e) Holdco has no plan or intention to issue additional stock following the Reincorporation.
- (f) Immediately following the Reincorporation, Holdco (through Opco) will possess the same assets and liabilities as those possessed by Sub 4 immediately prior to the Reincorporation.
- (g) At the time of the Reincorporation, Sub 4 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire an interest in Sub 4, except that it is possible that Parent, Sub 3, Sub 4 or their affiliates may enter into an exclusivity or similar agreement with an unrelated investor with respect to the JV Formation.
- (h) Holdco has no plan or intention to reacquire any of its stock issued in the Reincorporation.
- (i) Holdco (through its indirect interest in Opco) has no current plan or intention to sell or otherwise dispose of any of the assets of Sub 4 acquired (through its indirect interest in Opco) in the Reincorporation, except for the JV Formation, dispositions made in the ordinary course of business, or transfers described in Treasury Regulation § 1.368-2(k).
- (j) The liabilities of Sub 4 to be assumed by Holdco (within the meaning of section 357(d)) plus the liabilities, if any, to which the Sub 4 assets are subject at the time of the Reincorporation were incurred by Sub 4 in the ordinary course of its business and are associated with such assets.
- (k) Neither Investco nor Opco will elect to be classified as an association taxable as a corporation under Treasury Regulation § 301.7701-3 effective on or before the date that Sub 4 merges with and into Opco.
- (l) Sub 3, Sub 4 and Holdco will pay their respective expenses, if any, incurred in connection with the Reincorporation.
- (m) There is no plan for Holdco to liquidate or to merge into any other corporation.
- (n) Sub 4 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of Section 368(a)(3)(A).

Rulings

Based solely on the information submitted and the representations made, we rule as follows:

- (1) For federal income tax purposes, the Reincorporation will be treated as a direct transfer by Sub 4 of all of its assets to Holdco in exchange for all of the Holdco stock and the assumption by Holdco of the Sub 4 liabilities, followed by a liquidation of Sub 4 in which the Holdco stock is distributed to Sub 3 in cancellation of its interests in Sub 4.
- (2) The Reincorporation will constitute a reorganization under section 368(a)(1)(F). Sub 4 and Holdco each will be “a party to a reorganization” under section 368(b).
- (3) Sub 4 will recognize no gain or loss on the transfer of assets to Holdco in exchange for Holdco stock and Holdco’s assumption of Sub 4’s liabilities in the Reincorporation. Sections 361(a) and 357(a).
- (4) Holdco will recognize no gain or loss on the receipt of Sub 4’s assets in exchange for Holdco stock in the Reincorporation. Section 1032(a).
- (5) Holdco’s basis in each asset received from Sub 4 in the Reincorporation will be the same as Sub 4’s basis in such asset immediately before the Reincorporation. Section 362(b).
- (6) Holdco’s holding period for each asset received from Sub 4 in the Reincorporation will include the period during which such asset was held by Sub 4. Section 1223(2).
- (7) Sub 4 will recognize no gain or loss on the distribution of Holdco stock to Sub 3 in the Reincorporation. Section 361(c)(1).
- (8) Sub 3 will recognize no gain or loss on its exchange of Sub 4 interests for Holdco shares in the Reincorporation. Section 354(a)(1).
- (9) Sub 3’s basis in the Holdco stock received in the Reincorporation will be the same as its basis in the Sub 4 interests surrendered in exchange therefor. Section 358(a)(1).
- (10) Sub 3’s holding period for the Holdco stock received in the Reincorporation will include the holding period for the Sub 4 interests exchanged therefor, provided the Sub 4 interests are held as capital assets on the date of the exchange. Section 1223(1).

- (11) Holdco will succeed to and take into account the tax attributes of Sub 4 described in Section 381(c). Section 381(a). These items will be taken into account by Holdco subject to the conditions and limitations specified in sections 381 through 384 and the Treasury Regulations thereunder.
- (12) The Disposition and the JV Formation will not prevent the Reincorporation from qualifying as a reorganization under section 368(a)(1)(F). Rev. Rul. 96-29, 1996-1 C.B. 50.

Caveats

Except as specifically set forth above, we express no opinion concerning the tax consequences of the Proposed Transaction under any other provision of the Internal Revenue Code or Treasury Regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, other than as expressly provided above, no opinion is expressed regarding the tax consequences of the Disposition or the JV Formation.

Procedural Statements

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. Pursuant to a power of attorney on file in this office, a copy of this letter ruling will be sent to your authorized representative.

Sincerely,

Mark S. Jennings
Branch Chief, Branch 1
Office of Associate Chief Counsel (Corporate)